

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SAMUEL HILDENBRAND, On Behalf)
of Himself and All Others) CIVIL No. 07-1886 (JAG)
Similarly Situated,) (Consolidated)
)
Plaintiff,)
) RE: SECURITIES CLASS ACTION
v.)
)
W HOLDING, INC., *et al.*,)
)
Defendants.)
)

ANSWER OF DEFENDANTS
W HOLDING COMPANY, INC. AND WESTERNBANK PUERTO RICO
TO CROSS-CLAIM OF DEFENDANT JOSE M. BIAGGI

TO THE HONORABLE COURT:

Defendants W Holding Company, Inc. ("W Holding") and Westernbank Puerto Rico ("Westernbank," and collectively with W Holding, "Defendants"), by counsel, in response to the Cross-Claim filed by Defendant Jose M. Biaggi (the "Cross-Claim"), ^{1/} and without waiving any previously filed motions, ^{2/} state as follows:

^{1/} Biaggi's Third-Party Complaint does not appear to be directed against, nor could it properly be directed against, W Holding or Westernbank. To the extent that Biaggi's Third-Party Complaint is construed as directed against either W Holding or Westernbank, each reserves the right to respond to the allegations in the Third-Party Complaint in a separate pleading.

^{2/} Defendants are filing this Answer to comply with the Court's October 16, 2009 Case Management Order. Docket No. 98. Pursuant to that Order, Defendants are not waiving either their Rule 12(b)(6) Motion to Dismiss the Cross-Claim, see Docket No. 104, or their Rule 12(f) Motion to Strike the Thirty-Fourth Affirmative Defense, see Docket No. 105. See Case Management Order 2.

ANSWER

Unless otherwise stated, the numbered paragraphs in this Answer correspond to the numbered paragraphs of the Cross-Claim.

1. To the extent that paragraph 1 of the Cross-Claim incorporates allegations contained in the Amended Complaint filed by the plaintiffs in this case, Defendants incorporate the responses to those allegations contained in their Answer, see Docket No. 89, as if each such response were set forth fully herein. To the extent that that paragraph 1 of the Cross-Claim incorporates allegations contained in Biaggi's Thirty-Fourth Affirmative Defense (the "Thirty Fourth Defense"), Defendants state as follows (the numbered paragraphs immediately below correspond to the numbered paragraphs in the Thirty-Fourth Defense):

1. Defendants admit that Biaggi was the President and Chief Executive Officer ("CEO") of Westernbank and was not a director of W Holding. The allegation that Biaggi did not "participate in any meeting of any committee of [W Holding] during the Class Period" is vague and ambiguous and no response is required. The remaining allegations in Paragraph 1 of the Thirty-Fourth Defense consist of legal conclusions and contain no factual allegations to which a response is required.

2. The allegations in paragraph 2 of the Thirty-Fourth Defense consist of legal conclusions and contain no factual allegations to which a response is required.

3. The allegations in the first sentence of paragraph 3 of the Thirty-Fourth Defense consist of legal conclusions and contain no factual allegations to which a response is required. The allegations in the second sentence of paragraph 3 of the Thirty-Fourth Defense refer to documents that speak for themselves, and Defendants deny any erroneous, incomplete, or out-of-context characterizations thereof.

4. Defendants admit that Biaggi resigned from his position as President and CEO of Westernbank on March 29, 2007. The allegations that Biaggi was "effectively terminated" and "did not participate directly or indirectly in any of the events which may subsequently have occurred at Westernbank" are vague and ambiguous and no response is required; further, the allegations consist of legal conclusions and contain no factual allegations to which a response is required.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the

allegations in the first sentence of paragraph 5 of the Thirty-Fourth Defense, and therefore deny those allegations. Defendants deny the allegations in the second sentence of paragraph 5 of the Thirty-Fourth Defense.

6. Defendants admit that Biaggi was the President and CEO of Westernbank and was not a director of W Holding. The remaining allegations in paragraph 6 of the Thirty-Fourth Defense consist of legal conclusions and requests for relief and contain no factual allegations to which a response is required.

7. The allegations in paragraph 7 of the Thirty-Fourth Defense consist of legal conclusions and requests for relief and contain no factual allegations to which a response is required.

* * *

2. The allegations in paragraph 2 of the Cross-Claim consist of legal conclusions and requests for relief and contain no factual allegations to which a response is required.

3. The allegations in paragraph 3 of the Cross-Claim consist of legal conclusions and requests for relief and contain no factual allegations to which a response is required.

4. Defendants deny each and every allegation directed at them in the Cross-Claim that is not expressly admitted above.

WHEREFORE, Defendants hereby request that Biaggi's request for relief be denied, the Cross-Claim be dismissed with prejudice, Defendants be awarded costs and fees incurred in defending the Cross-Claim, and Defendants be granted such other relief as the Court deems appropriate.

ADDITIONAL DEFENSES

Without assuming the burden of proof on any matters for which that burden rests on Biaggi, Defendants assert the following Defenses to the Cross-Claim:

FIRST DEFENSE

To the extent the Cross-Claim incorporates allegations contained in the Amended Complaint, Defendants incorporate each defense to the Amended Complaint contained in their Answer, see Docket No. 89, as if each were set forth fully herein.

SECOND DEFENSE

Biaggi's Cross-Claim is barred, in whole or in part, because federal law prohibits indemnification for persons found to have violated federal securities laws.

THIRD DEFENSE

Biaggi's Cross-Claim is barred, in whole or in part, because Biaggi is not a member of the purported class and therefore cannot recover as one.

FOURTH DEFENSE

Biaggi's Cross-Claim is barred, in whole or in part, because Biaggi's assertion of claims as a class member is contrary to the Private Securities Litigation Reform Act.

FIFTH DEFENSE

Biaggi's Cross-Claim is barred, in whole or in part, because Biaggi is a defendant in this case, and therefore, he is seeking relief from himself.

SIXTH DEFENSE

Biaggi's Cross-Claim is barred, in whole or in part, because Biaggi fails to state a claim upon which relief can be granted.

SEVENTH DEFENSE

Biaggi's Cross-Claim is barred, in whole or in part, because Biaggi fails to comply with the requirements set forth in Local Civil Rule 10(a) for incorporating other pleadings by reference.

EIGHTH DEFENSE

Defendants hereby adopt and incorporate by reference any and all other defenses asserted or to be asserted by any other Cross-Claim defendant, to the extent that Defendants may share in such a defense.

NINTH DEFENSE

Defendants reserve the right to raise any additional defenses, cross-claims, and third-party claims not asserted

herein of which they may become aware through discovery or otherwise.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of October, 2009.

CERTIFICATE OF SERVICE: We hereby certify that on this same date the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants.

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